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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of: Group Art Unit: 3617
Applicant: Samuel R. Mollet, et al Examiner: McCarry Jr., Robert J..
Serial No.: 10/774,967 Atty. Docket: 121029-4 (383)
Filed: 02-09-2004
Title: REMOTE MONITORING OF RAIL LINE WAYSIDE EQUIPMENT

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

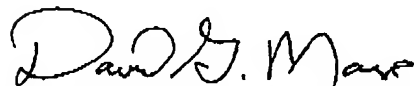
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Notice of Appeal (original plus duplicate copy - 2 pages total)
Pre-Appeal Brief Request for Review (1 page)
Arguments Supporting Pre-Appeal Brief Review (3 pages)

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September 13, 2005

David G. Maire, Reg. No. 34,865

Date

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Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 121029-4 (383)	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		Application Number 10/774,967	Filed 02/09/2004
		First Named Inventor Samuel R. Mollet	
		Art Unit 3617	Examiner McCary Jr., Robert J.
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
I am the			
<input type="checkbox"/> applicant/inventor.		Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/98)		David G. Maire	
<input checked="" type="checkbox"/> attorney or agent of record. Registration number 34,865		Typed or printed name	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		407-926-7704	
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		9-13-2005	
		Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
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In re: Application of:

Group Art Unit: 3617

Applicant: Samuel R. Mollet, et al

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Filed: 02-09-2004

Title: REMOTE MONITORING OF RAIL LINE WAYSIDE EQUIPMENT

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450ARGUMENTS SUPPORTING PRE-APPEAL BRIEF REVIEW

The applicants submit the following concise set of arguments for which the pre-brief review is being requested.

The applicants' first argue that the Examiner has failed to establish a *prima facie* case of obviousness. The Examiner has combined the Ehrenberger and Cardella references to support the rejections under 35 USC 103(a). The teaching or suggestion to make such a combination must be found in the prior art. (MPEP 2143) In the final rejection paper mailed 06/14/2005, the Examiner supports the rejections by stating that "The Examiner feels that the combination of these two links, from the wayside device to the locomotive [Ehrenberger] and from the locomotive to a remote location [Cardella] is an obvious relay for information to be passed from the wayside equipment to the remote location." However, what the Examiner "feels" does not establish *prima facie* obviousness. The mere fact that the references can be combined does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. The Examiner has not identified any suggestion or motivation in

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the references to make the suggested combination, and therefore has failed to establish a *prima facie* case for obviousness.

Secondly, the applicants argue that the Examiner has also failed to establish *prima facie* obviousness because he has not addressed all of the limitations of all of the claims. The Examiner has referred generally to limitations that are contained in the independent claims without specifically addressing the unique limitations of each independent claim. The Examiner has also specifically addressed certain limitations of a few of the dependent claims, but he has failed to even mention other limitations contained in other claims. For example and without intending to be all-inclusive, the Examiner has not identified any teaching in the art for the following claim limitations:

<u>Claim #</u>	<u>Limitation</u>
6	a sensor detecting an output of a human-observable annunciator
11, 22	the first communications link and the second communications link comprise two-way communication devices
14, 24	a polling signal generated from a location remote from the wayside location
19	the sensor is disposed on a railroad locomotive
25	processing the signal at the wayside location to generate information; and transmitting the information to a database remote from the wayside location
28	populating a failure database when the information is indicative of a failure of the equipment
29	populating a report from the failure database
30	transmitting the information from the locomotive to a location remote from the wayside location via a communication link also used for transmitting information regarding an operating status of the locomotive to a data center

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<u>Claim #</u>	<u>Limitation</u>
31	sensing the operation of an annunciator for railroad grade crossing equipment at a grade crossing location in response to a railroad locomotive passing the grade crossing location; generating information responsive to the sensed operation and indicative of an operating status of the annunciator; transmitting the information from the grade crossing location to the railroad locomotive; and transmitting the information from the railroad locomotive to a location remote from the grade crossing location.

Thus, the final rejections of claims 1-31 under 35 USC 103(a) are defective and should be withdrawn.

Respectfully submitted,



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